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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

<p>Elva Kramer,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Patenaude & Felix, A.P.C.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No: '13CV0683 GPC JMA</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.

12 3. Elva Kramer, ("Plaintiff"), through Plaintiff's attorneys, brings this action to
13 challenge the actions of Law Offices of Patenaude & Felix, A.P.C.,
14 ("Defendant"), with regard to attempts by Defendant to unlawfully and
15 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused
16 Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendant took place
23 in California.

24 7. Any violations by Defendant were knowing, willful, and intentional, and
25 Defendant did not maintain procedures reasonably adapted to avoid any such
26 violation.

27
28 **JURISDICTION AND VENUE**

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

9. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

10. Because Defendant does business within the State of California, personal jurisdiction is established.

11. Venue is proper pursuant to 28 U.S.C. § 1391.

12. At all times relevant, Defendant conducted business within the State of California.

PARTIES

13. Plaintiff is a natural person who resides in the City of San Diego, State of California.

14. Defendant is located in the City of San Diego, in the State of California.

15. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

16. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

17. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

18. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by

1 California Civil Code § 1788.2(b), is therefore a debt collector as that term is
2 defined by California Civil Code § 1788.2(c).

- 3 19. This case involves money, property or their equivalent, due or owing or
4 alleged to be due or owing from a natural person by reason of a consumer
5 credit transaction. As such, this action arises out of a consumer debt and
6 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

7 **FACTUAL ALLEGATIONS**

- 8 20. Sometime before January 29, 2013, Plaintiff is alleged to have incurred
9 certain financial obligations.

- 10 21. These financial obligations were primarily for personal, family or household
11 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
12 §1692a(5).

- 13 22. These alleged obligations were money, property, or their equivalent, which is
14 due or owing, or alleged to be due or owing, from a natural person to another
15 person and are therefore a “debt” as that term is defined by California Civil
16 Code §1788.2(d), and a “consumer debt” as that term is defined by California
17 Civil Code §1788.2(f).

- 18 23. Sometime thereafter, but before March 1, 2013, Plaintiff allegedly fell behind
19 in the payments allegedly owed on an alleged debt to Capital One Bank
20 (USA), N.A. Plaintiff currently takes no position as to the validity of this
21 alleged debt.

- 22 24. Subsequently, on November 15, 2012, Defendant, on behalf of Capital One
23 Bank (USA), N.A., filed a collections lawsuit against Plaintiff in the Superior
24 Court of San Diego, Case Number 37-2012-00085447-CL-CL-CTL.

- 25 25. Plaintiff (Defendant in the Case 37-2012-00085447-CL-CL-CTL)
26 subsequently retained counsel, whom promptly filed Plaintiff’s answer on
27 December 10, 2012.
28

26. On or about March 1, 2013, Defendant mailed correspondence to Plaintiff at Plaintiff's home address for the purpose of collecting the debt. A few days later, Plaintiff received Defendant's mailed correspondence.
27. Through this conduct, and without exception, Defendant communicated with a person other than the consumer for the purported purpose of acquiring location information after the Defendant knew the consumer was represented by an attorney with regard to the subject debt and had knowledge of, or could have readily ascertain, said attorney's name and address. Consequently, Defendant violated 15 U.S.C. § 1692b(6).
28. In Defendant's March 1, 2013 mailed correspondence to Plaintiff, Defendant stated their intent to obtain a Default Judgement against Plaintiff.
29. Through this conduct, Defendant made a false representation concerning the character, amount, or legal status of a debt. Consequently, Defendant violated 15 U.S.C. § 1692e(2)(A).
30. Through this conduct, Defendant threatened to take action that cannot legally be taken or that is not intended to be taken. Consequently, Defendantsviolated 15 U.S.C. § 1692e(5).
31. Through this conduct, Defendant used false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer. Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).
32. Because Defendant's conduct violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

CAUSES OF ACTION**COUNT I**

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**15 U.S.C. §§ 1692 ET SEQ.**

33. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

34. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

35. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)****CAL. CIV. CODE §§ 1788-1788.32**

36. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

37. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

38. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

39. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: March 14, 2013

By: s/Crosby S. Connolly
Crosby S. Connolly
Attorneys for Plaintiff

HYDE & SWIGART
San Diego, California